

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Proceeding by the Department of  
Telecommunications and Energy on its own Motion  
to Implement the Requirements of the Federal  
Communications Commission's Triennial Review  
Order Regarding Switching for Mass Market  
Customers; Loop and Transport Issues

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**D.T.E. 03-60**

**COMMENTS OF  
COVAD COMMUNICATIONS COMPANY**

By its Notice of Investigation dated August 26, 2003, and its Procedural Memorandum dated September 9, 2003, the Department requested that parties provide comments on the scope, nature, and timing of the Department's inquiry in the above-referenced proceeding in response to the FCC's *Triennial Review Order*. Covad Communications Company ("Covad") respectfully responds as follows:

Line Splitting: The *Triennial Review Order* has vested state commissions with the responsibility for determining the future of competition in the local telecommunications market. The future of voice competition in the residential market will hinge upon the ability of competitors to provide a bundled voice and data product, and hence, with respect to the determination regarding switching for mass market customers, the Department must not only determine whether competitors are impaired without access to unbundled local switching, but must also determine whether competitors are impaired without non-discriminatory access to a combined voice and data service, Line Splitting (Covad partners with voice providers over UNE-Platform to offer a bundled voice and data product). Line Splitting, however, only enables viable competition to the extent that it is possible for competitors to order and provision Line Splitting

at parity with the incumbent's ability to add data services for an existing voice customer (that is, Line Sharing). Competitors must have the ability to efficiently and quickly deliver bundled voice and data services. Should the Department fail to address line splitting issues in its 9-month switching proceeding, the outcome of that docket will be of little consequence because the future of voice competition in the residential market is dependent upon competitors being able to compete with Verizon's bundled voice and data product.

Copper Retirement: In addition, the Department has oversight of the process of retirement of copper loops and should address this issue, either in the 9-month loop and transport docket or via a separate proceeding. States should not permit ILECs to retire copper in the absence of a state commission review to address the end user and competitive impacts of such retirement. ILECs are currently limiting the ability of CLECs to offer various services on loops other than copper (e.g., DSL). Retirement of copper provides the ILECs with a simple way to eliminate competition now and to insure their monopolies over customers and services are not threatened in the future. States must be vigilant in monitoring this inherently anti-competitive activity by evaluating the customer impacts as well as the impact on CLECs resulting from such activities. Obviously, states also must address the prices, terms and conditions under which competing firms will continue to access the features and functionalities provided by the retiring plant via alternative facilities. Until such terms and conditions are in place, copper plant should not be permitted to be retired.

Therefore, Verizon should only be allowed to retire copper loops and subloops after it demonstrates that it has already made equivalent access available through alternative loop facilities that permit all carriers to obtain the same features and functionality (including, but not

limited to line splitting) and provide the same types of services that are possible through access to the copper loop or subloop.

This Department must adopt procedures to require the filing by Verizon of any plans it has to retire any copper loops or subloops. Under such procedures, Verizon would first file a petition with the Department containing appropriate supporting information, setting forth the factual basis for its request and proof that it has satisfied each of the Departments set substantive standards. Interested parties would then join the Department in evaluating Verizon's submission in an evidentiary proceeding.

Before the Department allows Verizon to retire copper loops being used by CLECs to serve customers, the Department must consider the following: (1) the type of service being provided over the facility; (2) the availability of replacement facilities to provide identical service the customer; (3) the price of the alternative facilities in comparison to the price of the current facilities; (4) the charges and processes by Verizon for migration to new facilities including all service order, migration, provisioning or related charges; (5) the impact on the CLEC of paying the charges associated with moving the customer to another facility and that CLEC's ability to make a profit on the line subsequent to incurring such expenses; and (6) the impact on competition that results from retirement of copper, including an assessment of what competitive alternatives exist for the customer once the copper is retired.

Before the Department allows Verizon to retire copper not currently being used by CLECs to provide service to customers, the Department should consider: (1) the impact on competition that results from retirement of copper, including an assessment of what competitive alternatives exist for customer once the copper is retired; and (2) the amount of CLEC

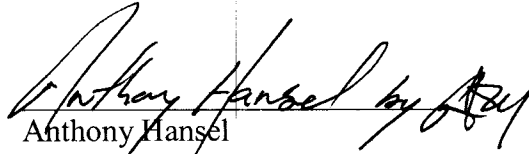
investment in a particular CO that may be stranded based on the retirement of copper loops from that CO.

Line Sharing and Hybrid Copper-Fiber Loops: Covad notes that the 9-month loop and transport docket described in the *Triennial Review Order* will significantly impact the future of internet access competition, which is dependent upon interoffice transport and high capacity loops, but is even more dependent upon access to the high frequency portion of the loop (“HFPL”) and hybrid copper-fiber loops. Currently, the vast majority of residential customers are receiving DSL broadband services through the HFPL. Accordingly, in order to ensure the future of competition in the Massachusetts internet access market the Department must examine whether competitors are entitled to access the HFPL and hybrid loops pursuant to Massachusetts’ independent state law authority, and its authority under Section 271 of the Act. This Department retains the requisite authority to determine whether circumstances in Massachusetts warrant the unbundling of line sharing on all copper-loops and the unbundling of hybrid copper-fiber loops. Such independent state law authority is not preempted by the FCC’s recent *Triennial Review Order*. The Act preserves Massachusetts’ independent authority.

This Department can and should address these issues. This Department is already looking at the unbundling of hybrid copper-fiber loops in its review of Verizon’s PARTS offering in the Department’s existing D.T.E. 98-57. This Department should address access to the HFPL (e.g., line sharing on all copper-loops) in the loop and transport proceeding or commence a separate proceeding to address this issue. The future of internet access competition in the residential market is dependent upon competitors being able to compete with Verizon’s data products, which Verizon itself provisions over HPFL and hybrid loops. This, in turn, will

allow consumers in the Commonwealth the ability to choose their preferred data provider and reap the benefits of competition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anthony Hansel by [initials]". The signature is written over a horizontal line.

Anthony Hansel  
Covad Communications Company  
600 14<sup>th</sup> Street, N.W.  
Suite 750  
Washington, D.C. 20005  
(202) 220-0410  
(202) 220-0401 (fax)  
[thansel@covad.com](mailto:thansel@covad.com)

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